HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

No. W.P. No. 2972/01 M/S
(Old No. 4286/1991)

State of U.P. and others
vs

District Judge and others.

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 18.9.2004.

Initial of Judge

HIGH COURT OF UTARANCHAL AT NAINITAL

Writ Petition No. 2972 (MS) of 2001

State of U.P. and others. ..... Petitioners

Vs

District Judge and others. ..... Respondents

Chief Standing Counsel for the petitioners
Sh. K.N. Joshi Counsel for the respondents.

Dated:18-9-2004

Hon'ble Rajesh Tandon J.

Heard Chief Standing Counsel for the petitioners and Sh. K.N. Joshi counsel for the respondents.

By the present writ petition the petitioners have challenged the order passed by the District Judge Tehri Garhwal. Initially the suit was filed by the plaintiff praying for the permanent injunction not to interfere in possession of the petitioner on the land shown in the plaint map under the heading (d).

Briefly stated the plaintiff has filed a suit with the allegation that the plaintiff's father Sh. Narain Singh started doing agriculture on compartment No.5 Shivpuri munkikhet District Tehri Garhwal. Since 1946, grove was planted on that land. The land was situated in the Reserved Forest and in 1925 there was no settlement for the forestland, therefore the land was not recorded in the name of his father.

The plaintiff respondent has submitted that he is in continuous possession over the land, since the time of his land ancestors. The plaintiff has claimed the relief of permanent

injunction restraining, then not to interfere in possession of the plaintiff over the land in suit.

The Written Statement was filed by the defendants. In paragraphs 14, 15 and 16, it has been stated as under:-

> शकि वास्ताविक्ता यह है कि वादी को सन 1965 में उसके प्रार्थना पत्र पर वन संरक्षक द्वारा लीज में षिवपुरी रेंज क मुनिकी रेती कम्पाटर्मेन्ट नं0 5 में एक एकड वन भूमि आरक्षित वन भूमि में (त्मेमतअमतक थ्वतमेज) स्वीकृत की गई। किन्तु वादी इस एक एकड मजूर सुदा भूमि की आड में ओर अधिक वन भूमि पर अपना अधिपत्य जताने की कोषिष कर रहा है और उस प्रयत्न में सफलता प्राप्त करने में उसने गलत वाद दायर किया है।
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> कि वादी का यह कथन बिल्कुल असत्य एवं निराधार है कि उसका दावी भूमि पर कब्जा मुखालफाना है। सत्यता यह है कि उसने हमेषा विवादित भुमि पर वन विभाग का स्वामित्व स्वीकारा है और उसे लीज में मंजूरी के लिये प्रार्थना पत्र दिया है, किन्तु उसे केवल एक एकड भूमि ही मंजूर की गई।
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> कि इस संबंध में यह उल्लेखनीय है किवादी ने अपने प्रार्थना पत्र दिनांक 2.2.65 के द्वारा दावी भूमि व लीज सुदा भूमि का रक्वा तीन–चार एकड होना बताता और उसे मंजूर किये जाने की प्रार्थना की, किन्तु वन संरक्षक के द्वारा उसे केवल एक एकड भूमि की लीज में मंजूर की गई और उसी पर वादी ने वृक्ष लगाये है, और लीज हाल ही मै विवादित हिस्से पर वृक्ष लगाने की चेष्टा कर रहा है जिसका उसे कोई अधिकार नही है।

The learned Judge has decreed the suit. The finding has been recorded that the land in dispute is not covered under the reserved forest. The finding to that effect is quoted below:-

"वादी के विद्वान अधिवक्ता ने तर्क दिया है कि विवादित भूमि आरक्षित वन भूमि नही है, क्योकि भारतीय वन अधिनियम के प्राविधानों के अनुसार कोई सेटलमेंट विवादित भूमि के विषय में नहीं किया गया है। उन्होने धारा 20 ए भा0 वन अधिनियम का हवाला देते हुये कहा कि विवादित भूमि चॅूकि भूतपूर्व महाराजा द्वारा श्री कुंजा देवी के पुजारी को खाने कमाने के लिये दे दी गई थी और इस विषय में प्रर्दष एक व दो टिहरी गढवाल रियासत है उ0प्र0 भूमि राज्य में मर्ह होने से पहले प्रदान किया गया था, इसलिये प्रष्नगत भूमि आरक्षित वन भूमि नही हो सकती है और धारा 20 ए क प्राविधानों के अनुसार आरक्षित वन भूमि से पृथक भूमि मानी जायेंगी।"

While deciding Issue No.5, the learned Munsif has recorded the finding, that the plaintiff was in possession. It was further established that there was a grant in his favour which has not been disputed by the defendant.

While deciding Issue No. 1, the finding was recorded that the plaintiff was the Pujari.

The plaintiff has preferred revision No. 1 of 1990 against the issue No.1. The learned District Judge Tehri Garhwal has come to the conclusion that the plaintiff has become Bhumidar of the land on abolition of Zamidari and as such finding on the issue was modified to that extent.

The revisional court has also referred the report of the settlement Officer dt. 11-August 1945. The same is quoted below:-

> *" It has next argued by learned Counsel for plaintiff revisionist that since the learned Munsif in giving the impugned finding has acted illegally with*

material irregularity, the same is liable to be modified this contention is that the learned Munsif has given finding an issue No.2 that plaintiff is the pujari of Kunjapuri temple and also in possession of the disputed land. Issue No.2 read as "Whether the plaintiff is owner and in possession of the disputed property, if so, its effect"

He has also filed and order of Samvat 2004 passed by the settlement Officer Tehri Garhwal stated dt.10-5-1947 Ext.2 . The relevant portion of this deed is reproduced below:-

"Poorab me Tapovan Gaon ke paas Janglat ander Birkhet tok me Kunjapuri Devi ke pujari Narain Singh ke Nale (Ek sai Gyarah Nali) Jameen Khane Kameene ke liye Bkshesh ke Taur Par Maharaja Sahab Ne De Rakkhi Hai, Jishko Van Kttu Kama Raha hai. Janglat ke paimaish hone k samaya is jamane ke Chakhbandi karke ye Rakhee Janglat se alag kiya jaye aur pujari ke naam is gaon ke Bandobasti Kagzatan me bapak Maurusir Darj kar Shamil Nil Kiya Jaye iske Babat Khulashemukne badkot ki bandobasti misle me pujari ke naya Hakooken ke Saath Bhi Diya Elaya Hai."

It may be pointed out that Kunwar Singh plaintiff is son of Narian Singh referred to above it is not disputed he is pujari of kunjapuri temple. Kunwar Singh P.W.1 has stated that his documents were stolen and he could get only two documents

referred to above which he has filed. He moved an application Ext. Ka-1 to take some land on lease. He has categorically stated that the application Ext.A 1does not relate to the disputed property . The details of the land are not mentioned in the application Ext. A1 it relates to some other land. He has admitted the lease deed Ext. A3 in respect of one acre of land. Basanand P.W.2, a retired employee of the forest department saw the possession of Narain Singh the father of plaintiff Kunwar Singh over the disputed land. We always found possession of Narain Singh and on his death of Kunwar Singh plaintiff whenever he went on petrol duty. Genda lel PW3 also asserts continuous possession of plaintiff and his father over the disputed land K.S. Mehra DW1 is in the service of forest department since 1982. He has proved may Ext. A2 of the disputed property. He asserts the possession of the plaintiff over the disputed land for 8 or 10 years but as per evidence of the plaintiff he is in possession of the disputed land since 1943. K.S. Mehra D.W.1 assess to have visited the disputed property on 20-12-1985. He also admits that map Ext. A2 has nothing to do with the lease deed Ext. A3 from the documents Ext. 1 and 2 regerred to above it is crysted clear that the land in dispute was gifted to plaintiff's father Narain Singh and the same was kept out of the reserved forest by the erst while Maharaja of Tehri Garhwal. The plaintiff became the Bhumidar of the disputed land

on abolition of Zamidari. The finding of the learned Munsif on issue No. 2 is liable to be modified to the extent the plaintiff is Bhumidhar of the disputed land and it is held accordingly."

The law is well settled as held in Ram Swaroop Vs. U.P. State Co-operative Land Devekopment Bank Ltd. Thilhar, Sahajahabdpur ARC 1990(1) 425 that the writ jurisdiction can not be exercised if the substantial justice has been done. The observation are quoted below:-

"It is well known by now that in the exercise of writ jurisdiction under Article 226 of the Constitution, a High Court does not issue futile writs not it interferes with a wrong order if the wrong order has done substantial justice between the parties. A High Court also does not issue writs if by quashing a wrong order another equally wrong order emerges."

In Sheo Prakash Agnihotri Vs. IVth Additional District, Judge, Kanpur and others ARC 1988 (2) 461. It has been held as under:-

"In my opinion, the power under Article 226 of the Constitution of India should not be exercised in this case so as to perpetuate an illegality."

Similar view has been taken in Mohd. Swalleh and others Vs. IIIrd Addl. District Judge , Meerut and another ARC 1987 (2) 513. It has been held as under:-

"Therefore in the facts and circumstances of the case justice has been done though, as mentioned herein before, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice had been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken."

In Mahendra Vikram Singh Vs. IVth Add. District Judge, Bareilly and other ARC 1984 (2) 461. It has been held as under:-
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"The learned counsel then urged that no revision lay against the order passed by the Rent Control and Eviction Officer recalling his earlier order and dismissing the allotment application filed by the opposite party. Reliance is placed on Santosh Kumar Misra Vs. Sri Ramanuj Darshan Mahavidalaya and other, 1977 ARC 77/. It has not necessary to go into this controversy as even assuming that revision was not maintainable, the petition cannot succeed. The learned counsel was asked time and again to satisfy that the second order passed by the Rent Control and Eviction Officer by which he reviewed his earlier order was sustainable in law and if the second order cannot be sustained then it is well settled that an order which is illegal cannot be quashed or set aside in writ jurisdiction, if quashing of it results in bring on record

another illegal order. therefore, the learned counsel was given opportunity but as pointed out earlier dispute his lengthy and strenuous argument he failed to satisfy that the order or the Rent Control and Eviction Officer which was passed by him earlier suffers from any error which could result in miscarriage of justice apparent on the fact of record or could justify its recall or review."

In view of the finding of the appellate court no interference is required in the writ petition. The respondent No.2 is in possession of the premises. State has not challenged the findings in a regular appeal, and as such the order passed by the learned Munsif on 21-8-1989 having become final.

Assuming that the revision was not maintainable against the finding of the issue No.1, even then the finding of the learned Munsif that the respondent is in possession having already become final. No inference is required under Article 226/227 of the Constitution of India.

Sh. Nand Prasad learned counsel for the petitioner has submitted that the revision was not maintainable. There is no substance in the argument as the finding of the Munsif with regard to the possession having not been challenged by the petitioner, I find no justification to interfere under Article 226 of the Constitution of India.

However it will be open for the petitioner to take recourse to any other proceedings in accordance with law. No interference can be made in the writ jurisdiction as the order has already become final.

Subject to the aforesaid observation, the writ petition is dismissed. No order as to costs.

Dated:- 18-9-2004 (RAJESH TANDON J.)

M.K.